

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant testified she injured her back when she lifted a trash bag into a dumpster on September 8, 1996. She was not scheduled to work on September 9, and she went to her personal physician, Dr. Kirk D. Ridley, the morning of September 9, 1996. Claimant testified that the afternoon of September 9 she reported the accident and injury to Mr. Rankin and requested to see a company physician. According to claimant, her request was denied because she had not filled out an incident report.

Evidence introduced by respondent includes testimony which directly contradicts critical parts of claimant's testimony regarding the notice she gave. Respondent's evidence also includes reports from the initial medical treatment which do not contain the history of a work-related accident. The records, in fact, do not show any cause of the back symptoms.

The Administrative Law Judge, before whom both witnesses testified, relied on the testimony given by the claimant to award benefits. Giving deference to the Administrative Law Judge's evaluation of credibility, the Appeals Board concludes that the Order should be affirmed. The Appeals Board notes that the Administrative Law Judge has, in his decision, indicated that claimant gave notice within 14 days of the date of accident. This appears to be an unintentional misstatement in the Order. The evidence shows that the notice was given either one or two days after the accident. The Appeals Board finds that claimant did give notice sufficient to satisfy the requirements of K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Robert H. Foerschler, dated November 8, 1996, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1997.

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BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS  
Jeff S. Bloskey, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director